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12/16/97**Ann Pegg Biddle**

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December 16, 1997

Via Fax (202) 874-6965

Cynthia L. Johnson

Director

Cash Management Policy and Planning Division

Financial Management Service

U.S. Department of the Treasury

Room 420

401 14th Street S.W.

Washington, D.C. 20227

Re: Proposed Rule for 31 CFR Part 208

Dear Ms. Johnson,

We welcome the opportunity to comment on Treasury's proposed rules for electronic funds transfer ("EFT"). I am one of four statewide coordinators for New York State's Disability Advocacy Program, which provides legal representation of individuals whose federal disability benefits have been denied or may be discontinued. The program statewide served over 85,000 persons seeking assistance with federal disability benefits and has obtained federal benefits for more than 38,000 disabled New Yorkers. As one of two co-coordinators for the New York City region, I provide support services ranging from training sessions for advocates, advice to advocates on individual cases, co-counseling on individual cases, and informational clearinghouse functions relating to disability law. My associate, Malcolm B. Spector, Esq., assisted class counsel in Robinson v. Chater and Rubin, 92 Civ. 7976 (TPG) (S.D.N.Y.), a class action lawsuit brought on behalf of recipients of Social Security benefits in the State of New York that established procedures for the Social Security Administration and Treasury to follow upon a recipient's claim of nonreceipt of a benefits payment. We make these comments with particular emphasis on how recipients of federal disability benefits would be affected.

Non-receipt of EFTs

The proposed regulations do not adequately address the problems that arise when electronic funds transfers (EFTs) go astray, not do they address the frequency of such occurrences. In

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particular, the proposed regulations fail to describe the responsibilities of Treasury in cases where EFTs are not received by the recipient.

The background information on the proposed regulations is vague and insufficient to justify the proposed procedures for increased reliance of EFTs. The NPRM states only that "recipients are 20 times less likely to have a problems with an electronic payment that with a paper check. . . .In those few cases where an electronic payment is mis-routed, it can be traced and rerouted to the recipient, usually within 24 hours after a claim of non-receipt is received."

To justify its proposed reliance on EFTs, the agency should present detailed, empirical data on:

- (a) the frequency and kinds of problems experienced with EFTs
- (b) the replacement of errant EFTs,
- (c) the recoupment of EFTs that are misdirected,
- (d) procedures available now to recipients to initiate claims and pursue claims for payments that are subject to dispute, including due process guarantees for claimants who are denied replacement EFTs.

Furthermore, the revised regulations are silent on Treasury's or other agency's responsibilities or obligations when an EFT is not received by the recipient. Proposed section 208.7 entitled "Agency responsibilities" deals only with the agency's obligation to receive information to set up accounts into which EFTs can be made or to grant waiver. Nothing is included about what the agency, the Department of the Treasury, or the United States Government should or must do when a recipient reports that an EFT was not received. This is a serious omission.

We urge that the regulations set minimally acceptable procedures for processing claims for missing EFTs. These regulations should:

- (a) define the division of responsibility between the agency that authorizes the payment, on the one hand, and the Department of the Treasury, which issues the payment, on the other.
- (b) set deadlines from the time of the report of the missing EFT to the transmittal of a replacement EFT.
- (c) establish procedures and specify personnel to conduct fraud investigations concerning missing EFTs, including the rights of claimants to dispute findings and present evidence when a replacement EFT is denied.

- (d) specify what procedures may be used to recoup a duplicate EFT sent in error.

Problems with EFT procedures have led to extensive delays in replacing benefits in some cases. In Robinson v. Chater and Rubin, 92 Civ. 7976 (TPG) (S.D.N.Y.), a class action lawsuit on behalf of recipients of social security benefits in the State of New York, a Stipulation and Order of Settlement in that case, filed January 30, 1997, established procedures that the Social Security Administration and Department of the Treasury would follow upon a recipient's claim of non receipt of an EFT. The procedures include the following:

(a) A claimant claiming non-receipt of an EFT must, upon request, provide SSA with the name and address or routing number of the financial institution and the account number to which the EFT should have been directed, in order for the Government to verify the accuracy of the its direct deposit data.

(1) If the Government's direct deposit data is accurate, the Government will promptly contact the financial institution to which the funds were transferred, to ascertain the status of the payment.

(i) The Government will attempt to ensure that the payment is properly credited to the claimant's account by making inquiry at the financial institution and/or by initiating a request to the financial institution that it trace the payment in question.

(ii) The claimant will be advised to initiate a follow-up claim with SSA if the original payment is not credited to his or her account within 10 calendar days of the initial claim of non-receipt. Upon receipt of a follow-up claim, the Government will contact the financial institution and follow-up as appropriate.

(2) If the financial institution routing number the Government has is inaccurate, SSA will promptly instruct the Department of the Treasury to issue a replacement payment based on the corrected data provided by the claimant. Upon receipt of instruction from SSA the Department of the Treasury will promptly reissue the payment in question.

(3) If the financial institution routing number the Government has is correct, but the claimant's account number is inaccurate, the Government will first attempt to correct the problem directly with the financial institution. If SSA is informed that, after a reasonable amount of time (but in no event longer than 30 days), the payment has still not been credited to the claimant's account, SSA will instruct the Department of the Treasury to issue a replacement payment based on the corrected

account data provided by the claimant. Upon receipt of instruction from SSA, the Department of the Treasury will promptly issue a replacement payment.

(b) If, after issuance of a replacement EFT payment, the original payment is deposited to the account of the claimant, SSA will treat the replacement payment as an overpayment and will initiate an overpayment proceeding to recoup the replacement payment. The claimant will be given a notice of overpayment, including SSA's proposed recovery action and advising him or her of the right to reconsideration by SSA, waiver, personal conference or a different rate of adjustment as provided for under applicable SSA policies and procedures. Claimants will be entitled to the standard appeal rights available from SSA with respect to SSA overpayment determinations.

These Robinson provisions increase the accountability of Treasury and the Social Security Administration and decrease delay in the replacement of payments. We urge that you accept these provisions and responsibilities in these regulations.

Waiver

While the waivers proposed in section 208.4 provide necessary relief to recipients of federal benefits for whom the EFT provisions would cause a hardship, the regulations are silent as to which agency has the responsibility to inform recipients of any waiver. Section 208.8 provides that recipients are responsible for certifying that they are entitled to waivers - but who is required to inform them? And what information is required to be used? To properly assure that recipients obtain full benefit of the waiver provisions, the regulations should specify that Treasury or the agency making the payment inform recipients of the availability of waivers, including the specific kinds of waiver.

In addition, the regulations should set forth minimum time frames for the recipients to certify for the waiver to the relevant agency. This is very important because the population most likely in need of waivers - the elderly, infirm, and isolated recipients - are the very population that is not likely to be able to respond quickly. Section 208.8 (b) specifies the timeframe only as that set by the agency making the payment, which means that the Social Security Administration could set 10 days for the waiver certification while the Veteran's Administration sets 45 days. This level of inconsistency would be eliminated by the setting of minimum timeframes. We urge that the regulations specify 45 days as the minimum period to respond to a notice about waivers.

Protection from Garnishment

All too often, advocates in disability law practices report

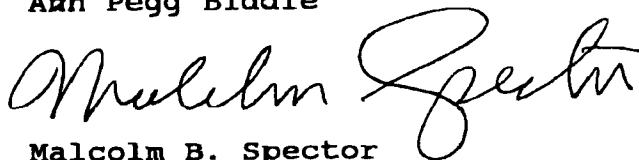
that recipients with federal disability benefits deposited in bank accounts have those accounts frozen by unscrupulous creditors. In those circumstances, the banks have failed to protect these funds from garnishment, as provided under federal law. In addition, once a recipient challenges the garnishment, even to the bank itself, the recipient is charged a fee by the bank to release the funds. With the advent of EFT and the shift of thousands more recipients to bank accounts, this problem can only worsen. These regulations should provide protections to the recipients who use bank accounts.

Thank you for the opportunity to comment on these proposed regulations.

Sincerely,



Ann Pegg Biddle



Malcolm B. Spector